IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 18TH OCTOBER 2006 / 26TH ASWINA 1928

WP(C).No. 22340 of 2004(H)

PETITIONER:

M.THAHA, PROPRIETOR,
TMS TRANSPORTING AND CLEARANCE,
VALLAKKADAVU P.O., THIRUVANANTHAPURAM.

BY ADV.SRI.G.JANARDHANA KURUP (SR.)
SRI.M.RAJAGOPALAN NAIR
SRI.G.BIJU

RESPONDENTS:

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1. CORPORATION OF THIRUVANANTHAPURAM
REP: BY ITS SECRETARY, OFFICE OF THE
THIRUVANANTHAPURAM CORPORATION,
THIRUVANANTHAPURAM.

2. SECRETARY TO GOVERNMENT,
LOCAL SELF GOVERNMENT DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

R2 BY GOVERNMENT PLEADER SRI.K.J.MOHAMMED ANSAR
R1 BY ADV.SRI.N.NANDAKUMARA MENON,SC,TVM CORPN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/10/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

WPC.22340 OF 2004

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF NOTICE DT.30.9.93

EXT.P2 – TRUE COPY OF RESOLUTION ADOPTED BY THE COUNCIL ACCEPTING THE QUOTATION OF THE PETR. AT THE LOWEST RATE OF RS.690/- PER LOAD.

EXT.P3 – TRUE COPY OF AGREEMENT EXECUTED BY PETR. DT.13.10.03.

EXT.P4 – TRUE COPY OF WORK ORDER DT.13.10.03 ISSUED BY R1.

EXT.P5 – TRUE COPY OF RESOLUTION SANCTIONING PAYMENT OF PART BILL AT THE RATE OF RS.690/- PER LOAD.

EXT.P6 – TRUE COPY OF RESOLUTION DT.29.3.04 OF THE CITY CORPORATION COUNCIL.

EXT.P7 – TRUE COPY OF LETTER DT.19.5.04 SENT TO THE CHAIRMAN OF HEALTH AND EDUCATION STANDING COMMITTEE.

EXT.P8 SERIES – TRUE COPY OF THE FINAL BILLS SUBMITTED BY PETR. FOR RS.6,33,420/-.

EXT.P9 – TRUE COPY OF NOTICE DT.29.9.04 ISSUED TO PETR.

RESPONDENTS' EXTS:

ANNEXURE-A TRUE COPY OF RESOLUTION NO.1(4) DT.30.7.04 ISSUED BY THE MAYOR & COUNCIL SECETARY, CORPORATION OF THIRUVANANTHAPURAM.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C) No.22340 OF 2004

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DATED THIS THE 18th OCTOBER, 2006

J U D G M E N T

The petitioner, a contractor who was engaged by the 1st respondent-Corporation to supply drinking water to various Divisions of the Corporation during the period from October, 2003 to 31st March, 2004 complains that Ext.P8 final bill submitted by him, in spite of being recommended by the concerned officers, is not being honoured by the Corporation. The total amount outstanding, according to the petitioner, was Rs.15,40,770/- out of which Rs.3,73,560/- was paid by cheque on 7.7.2004 and the balance payable is Rs.11,67,210/-. Producing documents Exts.P1 to P8 series and raising various grounds, the petitioner has filed the Writ Petition seeking a direction to the Corporation to produce the file relating to Ext.P4 work executed by him and verify the correctness of the petitioner's claims and also a writ of mandamus commanding the 1st respondent to pay the balance amount payable to the petitioner on account of Exts.P6 and P8 without further delay.

2. A detailed statement has been filed on behalf of the Corporation refuting the claims of the writ petitioner. Annexure-A resolution of the Council approving the action of the Secretary in

deciding to reduce the payment due to the petitioner to Rs.285/- per trip of lorry service (as against the contract amount of Rs.690/- per trip) is also produced. It is pointed out that the rate which was quoted by the petitioner is quite unreasonable and highly excessive when compared to the rate quoted by another contractor by name Smt.A.K.Krishnakumari in response to a subsequent quotation. It is contended that since the liability to pay the amount is denied by the 1st respondent-Corporation, this Court will not be justified in invoking its jurisdiction under Article 226 of the Constitution of India for giving relief to the petitioner.

3. A reply affidavit as well as a reply statement has been filed by the petitioner, reiterating the contentions and producing additional document Ext.P9.

4. Sri.G.Janardhana Kurup, Senior Advocate addressed me very elaborately on the basis of the grounds raised in the Writ Petition and with reference to the documents placed on record. Learned Senior Counsel would rely on the judgment of the Supreme Court in **Gujarat State Financial Corporation v. Lotus Hotels** [(1983) 3 SCC 379] and also that of the Full Bench of this Court in **State of Kerala v. Anil** (2002 (1) KLT 371), so as to fortify his submissions.

5. After hearing Sri.N.Nandakumara Menon, learned Standing Counsel for the Corporation for some time, I suggested to both sides that having regard to the documents which are placed on record and the circumstance that the 1st respondent-Corporation is a public authority, it will be appropriate if the issue is resolved between the parties, by the writ petitioner receiving payment at the rate of Rs.490/- per trip as against the contract rate of Rs.690/- per trip. It was also noticed that if the balance amount is re-calculated at this rate, the same will come to Rs.5,92,190/-. The learned Standing Counsel for the Corporation took time to consult the Corporation. The learned Standing Counsel has informed me today (18.10.2006) that after much persuasions, the Corporation became agreeable for paying Rs.5,92,190/- in full and final settlement of the petitioner's claims and that a resolution in that regard has been passed by the Council on 29.9.2006.

In view of the above submissions, the Writ Petition will stand disposed of with the following directions:-

The Corporation is directed to pay the sum of Rs.5,92,190/- to the writ petitioner within two months of receiving copy of this judgment. If the amount is not paid as above, the amount will

become payable with interest at the rate of 9% per annum from the date of the judgment itself. There will be no order as to costs.

(PIUS C. KURIAKOSE, JUDGE)

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